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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/725,807	12/02/2003	Cor 't Hooft	F7584(V)	3326
201	7590	06/17/2004	EXAMINER	
UNILEVER PATENT DEPARTMENT 45 RIVER ROAD EDGEWATER, NJ 07020			PADEN, CAROLYN A	
			ART UNIT	PAPER NUMBER
			1761	

DATE MAILED: 06/17/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

<b>Office Action Summary</b>	<b>Application No.</b> 10/725,807	<b>Applicant(s)</b> T HOOFT ET AL.	
	<b>Examiner</b> Carolyn A Paden	<b>Art Unit</b> 1761	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 02 December 2003.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 13 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 13 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☒ Certified copies of the priority documents have been received in Application No. 10/025,296.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>12-2-03</u> . | 6) <input type="checkbox"/> Other: _____  |

No obvious-type double patenting rejection has been made in this application because there is no incentive from the prior art claims to obtain the food composition of claim 1.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 6 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Zmarlicki (Polish abstract XP-002166914).

Zmarlicki discloses the use of anhydrous milk fat in the production of protein-free dairy spreads. Although triglycerides are not literally mentioned in the abstract, it is very well known to anyone with at least one course in organic chemistry with at least one class on food components that fats and oils are predominantly composed of triglycerides. The milk fat and sunflower ingredients in Zmarlicki add up to more than 60wt% triglycerides. The sunflower lecithin in the reference is at 0.4%.

Claims 6 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Zmarlicki (Polish abstract XP-002166914) as further evidenced by Desrosier.

Zmarlicki discloses the use of anhydrous milk fat in the production of protein-free dairy spreads. Although triglycerides are not literally mentioned in the abstract, it is very well known to anyone with at least one course in organic chemistry with at least one class on food components that fats and oils are predominantly composed of triglycerides. The milk fat and sunflower ingredients in Zmarlicki add up to more than 60wt% triglycerides. The sunflower lecithin in the reference is at 0.4%. Although the abstract in Zmarlicki does not literally state "margarine", most U.S. consumers, who have been to the grocery store, would recognize that margarine is a spread that is similar to butter. Desrosier is relied upon for evidence that margarine is classified as a water-in-oil emulsion containing about 16% water (p 530, last 2 lines).

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8 and 13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Wieske (0,253,429) in view of Hollo (JAOCS 1993).


Wieske discloses phosphatide-containing compositions that are used in margarine and are anti-spattering agents. In examples 1-3, (page 5, column 2), soybean lecithin was fractionated by solvent extraction. Then the alcohol-insoluble fraction was subsequently hydrolyzed under conditions favoring hydrolysis of phosphatidic acid and phosphatidylethanolamine in favor of phosphatidylcholine. The hydrolysis is achieved utilizing phospholipase A2 at a pH of 7.5-8 at 60C for 4 hours. The final product is shown at table 1. This composition was then mixed with the alcohol-soluble fraction of soybean lecithin in a weight ratio of 2:1 and 1:2. This formulation was then used in the manufacture of margarine. The margarine formulation is shown at the bottom of page 5 and the top of page 6 to contain up to 82wt% soybean oil, 0,5-1 wt% phospholipid and up to 18-wt% water. Claim 1 appears to differ from the reference in the recitation of the use of sunflower lecithin. Hollo teaches that sunflower lecithin has surface activity properties that are similar to soybean lecithin. The reference goes on to provide for hydrolysis and fractionation of

sunflower lecithin to overcome any handling problems associated with sunflower lecithin. It would have been obvious to one of ordinary skill in the art to utilize the sunflower lecithin of Hollo in the margarine of Wieske (0,253,429) in order to utilize an inexpensive source of an anti-spattering agent. In this case the secondary reference teaches that each of these lecithin sources have similar properties and thus could have been substituted as equivalent sources of vegetable lecithin. This is particularly so since Hollo provides for the production of food-grade sunflower lecithin in the 1993 time period. It is appreciated that the extent of hydrolysis is not mentioned in the reference. But lecithin in Wieske is used to limit spattering of margarine. So no unobvious or unexpected result is seen to flow from the recitation of the degree of hydrolysis of the lecithin that is set forth in claims 3-5. The method of claim 13 is clearly shown in the model-frying test shown on page 10 of Wieske.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano, can be reached on (571) 272-1398 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
CAROLYN PADEN 6-8-04  
PRIMARY EXAMINER  
GROUP ~~1300~~ 1761